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Supreme Court, U.S.
FILED

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NO.________________ ~~OFFICE OF THE CLERK~~

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

DR. SIMON BANKS, T/A
JOB PROTECTORS
FORMER ADMINISTRATIVE LAW JUDGES,

Petitioner

V.

DISTRICT OF COLUMBIA DEPARTMENT OF COLUMBIA CONSUMER AND REGULATORY AFFAIRS AGENCY,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

174 pp

PETITION FOR WRIT OF CERTIORARI

Dr. Simon Banks, J.D. Job
Protectors
Former Administrative Law
Judges,
468 M Street, S.W.
Washington, D.C. 20024
[202] 554-5627

QUESTIONS PRESENTED

Whether the District of Columbia Court of Appeals Decision upon Simon Banks' Petition For Review of the Order of the District of Columbia Department of Consumer and Regulatory Affairs, dated December 6, 1993, is arbitrary, capricious and not supported by substantial evidence or a preponderant of evidence on the record.

Whether the District of Columbia Court of Appeals acted arbitrarily and capriciously and abused its discretion when it failed to remand the case to the agency for a fuller explanation in order for the court to fulfill its duties.

Whether the conclusions of the District of Columbia Consumer and Regulatory Affairs is arbitrary, capricious and an abuse of discrection and not supported by substantial evidence or a preponderance of evidence on the record.

Whether the District of Columbia Consumer and Regulatory Affairs engaged in retroactive rulemaking and acted in an ultra vires manner when it reached the conclusions it reached based upon the record as a whole.

Whether the decision of the District of Columbia Consumer and Regulatory Affairs and the District of Columbia Court of Appeals had a chilling effect upon Banks' constitutional rights under the First, Fifth and Fourteenth

Amendment of the United States Constitution.

Whether the District of Columbia Court of Appeals suffered from diminished impartiality when it: (a) failed to remand the case, (b) when it attempted to enforce DCCA Rule 49 through the DCRA Consumer Protection Procedures Act, and (c) when it failed to credit Petitioner's affirmative defenses to the decision issued by the District of Columbia Consumer and Regulatory Affairs, that Petitioner's conduct in representing clients before federal administrative agencies was protected conduct, authorized pursuant to federal and state laws that afforded lay representation of parties before administrative agencies, consistent with DCCA's actions in In re Simon Banks 561 A.2d 158 and In Re Simon Banks, 92-652 and 92-SP-652, before the Court on Petition for Writ of Certiorari.

Whether the District of Columbia Consumer Protection Procedures Act, is preempted by District of Columbia Statutory Law and Federal Law which provide for lay representation of parties before administrative agencies.

Whether the District of Columbia Consumer Protection Procedures Act is unconstitutional as applied to Banks.

Whether the District of Columbia Court of Appeals Rule 49 is unconstitutional as applied to Banks where it excludes attorneys from its prohibitions whom are not licensed to practice law in the District of Columbia that regularly practice before administrative agencies without limitation as to appearances, and where it precludes the Petitioner from engaging in similarly conduct and from exercising similar privileges, on the basis that he does not have a license to practice law in the District of Columbia.

Whether the District of Columbia Court of Appeals and the District of Columbia Consumer and Regulatory Affairs engaged in retroactive rulemaking in there decision-making process which include affirming the decision of the District of Columbia Consumer and Regulatory

Affairs Agency where it excludes attorneys from its prohibitions, similarly to DCCA Rule 49 governing Unauthorized Practice of Law, whom are not licensed to practice law and whom regularly practice before administrative agencies without limitation as to appearances, and where it [CPPA] precludes the Petitioner from engaging in similarly conduct and from exercising similar privileges, on the basis that he does not have a license to practice law in the District of Columbia.

LIST OF PARTIES

The following parties appeared below.

PARTY PETITIONER

Dr. Simon Banks, J.D.

468 M Street, S.W.

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[202] 554-5627

PARTY RESPONDENT:

Stuart Pierson, Esq.

500 Indiana Avenue, N.W.

Washington, D.C. 20001

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The Government of the District of Columbia Department of Consumer and Regulatory Affairs Office of Adjudication issued its decision on July 10, 1991,[1]

The District of Columbia Court of Appeals issued its decision, per curiam, on December 6, 1993, [2]

The Petition for rehearing was denied by the District of Columbia Court of Appeals on February 4, 1994.[3]

Transcript of proceedings held on April

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[1] **See** Appendix Pages Nos: "APP1-20"

[2] Appendix Pages Nos: "APP21-51"

[3] **See** Appendix Pages Nos. 52 ["APP52"]

22, 1991 upon which the DCCA and DCRA relies in support of the decisions.[4]

JURISDICTION

This Court has jurisdiction over this case pursuant to 29 U.S.C. §1254(1).

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[4] See Appendix Pages No. APP53-59.

DISTRICT OF COLUMBIA STATUTES

District of Columbia Human Rights Act, Title 34, 2-38,

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REASON FOR GRANTING THE WRIT

A reason for granting the writ is to preserve the constitutional rights of the petitioner and others seeking to prosecute complaints alleging discrimination in employment pursuant to clearly established federal rights under laws providing for equal civil rights, without unwarranted restraint and interference, and to protect such rights from being subjected to arbitrarily and capricious rulemaking.

A second reason for granting the writ is to protect the petitioner from deprivation of prior restraint of protected speech and association under the First Amendment, and to protect the

Petitioner and others whom are advocates against discrimination in the workplace from unwarranted deprivation of liberty, property interest and equal protection, through the adjudicatory process of arbitrary retroactive rulemaking and ultra vires conduct of the District of Columbia Court of Appeals and the Consumer and Regulatory Affairs Agency.

STATEMENT OF THE CASE

The Petitioner, a former Chief Administrative Law Judge and Hearing Examiner with the District of Columbia Government Commission on Human Rights,[1] assigned to adjudicate equal employment opportunity discrimination complaints [hereinafter "EEO" Complaints] filed by the general counsel of the District of Columbia

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[1] The District of Columbia Commission on Human Rights is the judicial arm of the Office of Human Rights. The Office of Human Rights is a recipients of federal funds pursuant to its contract with the United States Equal Employment Opportunity Commission, as a designated § 706 deferral-State contract agency, 29 CFR § 1601.70, authorized by the United States Equal Employment Opportunity Commission to investigate, conciliate, adjudicate complaints of employment discrimination filed by private sector employees pursuant to 42 U.S.C § 2000e, as amended, of the 1964 Civil Rights Act.

Office of Human Rights Office and EEO complaints filed by private sector attorneys, pro se complainants and government employees.

Petitioner, whom presently operates a legal consulting firm that prosecutes EEO complaints on behalf of private sector and government employees, and against law firms,[2] pursuant to

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[2] The Petitioner operates a legal consulting firm entitled Job Protectors Former Administrative Law Judges, which provides lay representation to parties before administrative agencies of the United States, the District of Columbia and the various states of the United States, Europe and Japan. The Petitioner commenced his business in 1986 as Job Protectors, and prior thereto, Petitioner operated as "Administrative Hearing Advocates", and "Simon Banks & Associates, Administrative Law Judges & Hearing Examiners.

Petitioner was appointed administrative law judge and hearing examiner by the District of Columbia Commission on Human Rights, the judicial arm of the District of Columbia Office of Human Rights, pursuant to federal grant funds provided by the United States Department of Labor and the United States Equal Employment Opportunity Commission, 1n 1975-1976, and during the period 1977-1978 Banks served as an Administrative Law Judge with the District of Columbia Rental Accommodation Office [Rent Control], now a subagency of District of Columbia Consumer and

clearly established laws that a reasonable person would know,[3] petition the Court for Writ of

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Regulatory Affairs Agency. [DCRA] Although Banks has a Juris Doctor Law Degree Banks is not licensed to practice law in the District of Columbia.

[3] The various federal laws and state statutory laws that provide for lay representation of parties before administrative agencies include:

The Civil Service Reform Act of 1978 (CSRA or Act), 5 U.S.C. §§ 7501-7543, Pub. L. No. 95-454, 92 Stat. 111 (codified as amended by 5 U.S.C. §§ 1101-8913) **See Legislative History of the Civil Service Reform Act of 1978, at 636, 639 (Comm. Print 1979)** provide that federal employees are entitled to be represented by any person of their choosing and that person does not have to be an attorney.

Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, 29 C.F.R. § 1613.213-217, 29 C.F.R. § 1614.106, 29 C.F.R. § 1614.214(b), 29 C.F.R. § 1601.70 29 C.F.R. § 1613.61 [precluding reprisal against complainant's representative; EEOC Directive Transmittal and Order 570.001, dated Sept. 1987, EEOC Order 572, dated March 12, 1979, "Definitions, ¶h., provides: **"Employee Representative. "An attorney or other person designated by the employee, in writing, who is willing to act on the employee's behalf in matters involving a proposed or actual suspension.."** ; 5 C.F.R. § 1201.31(b),

Certiorari, appealing the per curiam Order of the District of Columbia Court of Appeals

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provides: **"A party may choose any representative so long as the person is willing and available to serve"**; Federal Register, Thursday July 10, 1986, Part II Merit Systems Protection Board 5 CFR Part 1201 Practice and Procedure, Final Regulation, at § 1201.31, Representation provides:

"(a) A party to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representative. (b) A party may choose any representative so long as the person is willing and available to serve."

The Merit Systems Protection Board Appeals Form Page 2, Part V ¶31, Designation of Representative, provides: **"You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney.*;**

District of Columbia Register, Commission on Human Rights Guidelines, Page 3, at 3202.3 provides: **"The representative of a party before the Commission does not have to be an attorney"**

District of Columbia Office of Employee Appeals "Appeals Form", Part III, Hearing ¶7; specifically provide that employee representative(s) do not have to be an attorney.

[hereinafter "DCCA"] dated December 6, 1993, and appeals the DCCA en banc order dated February 4, 1994, denying rehearing in banc.

In support of the petition, Petitioner cites the following:

1. The decision of the Court in part affirming the decision of the District of Columbia Consumer and Regulatory Affair [hereinafter "DCRA"] holding the Petitioner in violation of the DCRA Consumer Protection Procedure Act, for allegedly committing prohibited trade practices in connection with his statement to Hodges, a former client, that Petitioner: a) as an administrative advocate, b) will file an EEO complaint before the United

States Equal Employment Opportunity Commission [EEOC] an administrative agency, against Hodges employer, Washington Metropolitan Transit Authority, for discriminating against Hodges, c) without the Petitioner distinquishing between himself and a "lawyer;" d) thereby giving the false impression that Petitioner is the functional equivalent of a "lawyer," e) and thereby giving the false impression that Petitioner is a licensed member of the District of Columbia Bar, is arbitrary capricious, an abuse of discretion and not supported by a preponderance or substantial evidence on the record. See Eilers v. District of Columbia Bureau of Motor Vehicle Servs., 583

A.2d 677, 685 (D.C. 1990). The agency [DCRA] failed to provide the standards upon which it rely and failed to state its reason in support of its conclusions or to adopt an intelligible decisional standard, that is so glaring that a reasonable decisionmaker can declare with confidence that the agency's action was arbitrary and capricious. See, American Fed'n of Gov't Employees v. FLRA, 774 F.2d 498, 504-05 (D.C. Cir. 1985). Since based on the record the court could not exercise its duty of review unless it is advised of the considerations underlying the action under review. See SEC v.

Chenery Corp., 318 U.S. 80, 94 (1943)[4].

2. The District of Columbia Consumer & Regulatory Affairs Agency, pursuant to the Consumer Protection Procedures Act, D.C. Code § 28-3904 (1991), does not have jurisdiction over Petitioner on the basis that it does not speak to "authorized representation of parties before administrative agencies concerning matters of law [legal representation

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[4] **See** United States Dep't of Defense v. FLRA, 982 F.2d 577, 580 (D.C. Cir. 1992) the court in remanding the case opined: "Because the record and FLRA's explanation for its decision are insufficient to support judicial reiew, the case is remanded to FLRA." **See** Radio Station KFH Co. v. FCC, 247 f.2D 570, 572 (D.C. Cir. 1957). The principle has been extended to certain situations where the court is not certain whether an agency has neglected to include a relevant factor in its decision. **See** Southwestern Public Serv. Co. v. FERC, 952 F.2d 555, 563 (1992), Charlottesville v. FERC, 661 F.2d 945, 954 (D.C. Cir. 1981); City Fed. Savings & Loan Ass'n v. FHLBB, 600 F.2d 681, 689 (7th Cir. 1979), Pittsburgh Press Co. v. NLRB, 977 F.2d 652, 658, 662 (D.C. Cir. 1992)

authorized by state and federal laws]".[5]

The DCCA's decision affirming jurisdiction over Banks pursuant to the DCRA-CPPA, based on his lack of a license to practice law in the District of Columbia, while excluding lawyers not licensed to practice law in the District of Columbia from the provisions of D.C. App. Rule 49 and provisions of the District of Columbia Consumer Regulatory Affairs' Consumer Protection Procedures Act [DCRA-

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[5] The District of Columbia Court of Appeals opined in Brookens v. Committee On Unauthorized Practice of Law, D.C. 538 A.2d 1120 (D.C. App. 1988, opined that the District of Columbia Court of Appeals has exclusive jurisdiction over the practice of law. The D.C. Court of Appeals further upheld the rules of administrative agencies in the District of Columbia, whom afford for lay representative of parties as not falling within the preclusions and prohibitions of the District of Columbia Court of Appeals Rule 49, prohibiting unauthorized practice of law.

CPPA], D.C. Code § 28-3904, is unconstitutional, discriminatory, arbitrary and capricious, not supported by any compelling state interest[6]; and an attempt to selectively enlarge and enforce the jurisdictional authority of the District of Columbia Consumer and Regulatory Affairs CPPA to incorporate DCCA Rule 49 governing unauthorized practice of law, in violation of the Equal Protection Clause, the

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[6] The DCRA and D.C.C.A.'s classification and discriminatory enforcement of D.C.C.A. Rule 49 and DCRA law CPPA, does not bear a substantial relationship to the District of Columbia Government's ligitimate/rational objectives. Piper, supra, 470 U.S. at 284, 105 S.Ct. at 1279; United Building & Construction Trades Council v. Mayor & Council of Camden, 465 U.S. 209, 104 S.Ct. 1020. Moreover, it operates as selective censorship. **See** New York Times Co. v. United States, (1971) 403 U.S. 713. This selective censorship and prior restraint must be supported by a compelling state interest. Minneapolis Star & Tribune Co. v. Minnesota Comr. of Revenue, (1983) 460 U.S. 575.

Due Process Clause and the Privileges and Immunities Clause as incorporated in the Fourteenth Amendment, without complying with the notice requirements of the District of Columbia Administrative Procedures Act.[7]

Moreover, the Petitioner is charged with planning to file an EEO complaint before the EEOC, an administrative agency. Representation by lay representatives before administrative agencies is not covered by DCCA Rule 49 or DCRA-CPPA.[8]

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[7] D.C. Code §§ 1-1501 *et seq.*, D.C. Code § 1-15099b),(b). **See** *Wallace v. District of Columbia Unemployment Compensation Board*, D.C. App., 289 A.2d 885, requiring District of Columbia Agencies to comply with the DCAPA when enforcing conflicting rules.

[8] **See** *Brookens v. Committee On Unauthorized Practice of Law*, 538 A.2d 1120 (1988)

3. The provisions of CPPA and the decision of the Court [DCCA] in declaring lawyers [defined by DCRA and DCCA as licensed attorneys, licensed in any state of the United States] excluded from the scope of District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3904 (1991), while including Petitioner based upon his lack of a license to practice law by the District of Columbia Bar, a requirement of DCCA Rule 49, is arbitrary, discriminatory, and capricious and not supported by any compelling state interest or appropriate statutory construction of the legislative intent or the enabling act establishing District of Columbia Consumer Protection

Procedures Act, D.C. Code § 28-3904 (1991).[9]

4. The decision of the Court erroneously, arbitrary and capriciously affirms the conclusions of the DCRA, based upon its reliance on presumed facts found upon inferences drawn by the DCRA Administrative Law Judge rather than the facts found in the record, to support the conclusion that Banks is not the functional equivalent of a lawyer, advocate, or "administrative trial advocate,"

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[9] The D.C.C.A. opined, arbitrarily, capriciously, selectively and discriminatorily, that Banks as a non-lawyer is included in the provisions of the Consumer Protection Procedures Act, while it specifically excludes other non-members of the District of Columbia Bar whom are lawyers, at p.7, ¶3 by arbitrarily and selectively labeling petitioner as a "merchant", while further excluding "attorneys not licensed by the District of Columbia Bar," from this label, consistent with the provisions of DCCA Rule 49 governing unauthorized practice of law [**Emphasis added**]

although there has been no findings of fact, no identifiable standard, no qualitative, quantatative analysis of Banks professional performance versus lawyers, attorneys, members of the District of Columbia Bar, or members of any of the various bars of the United States to support the conclusions.[10]

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[10] The DCRA failed to provide an adequate basis for judicial review under the DCAPA and crossed the critical line between being "tolerably terse" and "intolerby mute." **See** Saratoga Development Corporation v. United States of America, et al, D.C. Cir. No. 92-5019, at 13 [Decided April 15, 1994] Reeve Aleutian Airways, Inc. v. United States, 889 F.2d 1139, 1144 (D.C. Cir. 1989) (quoting Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). **See also** Lee v. District of Columbia Zoning Commission, D.C. App., 411 A.2d 635, 638 (1980), in which the D.C. Court of Appeals reiterated the test used in determing whether substantial evidence exists providing:

> ......"The 'substantial evidence' requirement of §1-1509(e) of DCAPA has three components. First, the issue of fact. second, there must be sufficient evidence to support the factual findings made, i.e., 'such relevant evidence as a reasonable mind might accept as adequate....' Finally,

There is no dispute that the District of Columbia Government equated Banks as the "functional equivalent of an Administrative Law Judge" with respect to EEO cases.[11] These conclusions

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> there must be a rational connection between the findings made by the agency and the decisions it reaches."

See also Stewart v. District of Columbia Board of Zoning Adjustment, D.C. App., 305 A.2d 516 (1973). The DCAPA requires the agency to set forth each element of the statutory or regulatory findings. Dietrich v. Board of Zoning Adjustment, D.C. App., 293 A.2d 470 (1972). The D.C. Code, §1-1509(e) requires that every decision and order adverse to a party must be in writing and "shall be accompanied by findings of fact and conclusions of law," which must "be supported by and in accordance with the reliable, probative, and substantial evidence. Proctor v. Hackers' Board, D.C. App., 268 A.2d 267, 268 (1970).

[11] In 1975 the District of Columbia Government selected Banks, competitively, by a selection Committee that were primarily attorneys, to serve as "Chief Administrative Law Judge and Hearing Examiner" for the District of Columbia Commission On Human Rights, which adjudicate EEO complaints filed by private-sector and District of Columbia Employees, upon the recommendations of Judge Harry T. Alexander of the Superior Court, Wilamenia Rolark former Chairman of the District of Columbia City Council Judiciary Committee; Attorney Delano Lewis, former President of the Chesapeake and Potomac Telephone Company [C&P], now president of

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National Public Radio, attorney Willie Leftwich, attorney Dovey Roundtree and others.

In 1980 the District of Columbia Minority Business Opportunity Commission Certified Petitioner's firm as "Administrative Law Judges & Hearing Examiners". Banks was again appointed Administrative Law Judge & Hearing Examiner with the D.C. Rental Accommodation Office and rose to Chief of Eviction Adjudication, now a division of the DCRA. In both positions Banks received "Outstanding Performance Evaluations" for his job performance. The 1990 editions of Blacks Law Dictionary and Barons Law Dictionary define "Hearing Examiners" as interchangeable with "Administrative Law Judge".

5 U.S.C. § 3105.5372. and 7521 (Supp. 1V 1980) provides: - **The Title "Hearing Examiner" was changed to "Administrative Law Judge" by United States Civil Service Commission regulation on Aug. 19, 1972, 37 Fed. Reg. 1687, and by statute on March 27, 1978, 5 U.S.C. § 3105 (Supp. 1V 1980). See Manual For Administrative Law Judges Prepared for the Admiistrative Conference of the United States, Published in 1972, Revised Edition 1982, by Merritt Ruhlen Administrative Law Judge, Retired;**

The District of Columbia Government certified Petitioner's consulting firm "Simon Banks & Associates Administrative Law Judge and Hearing Examiners" as **"Simon Banks & Associates Administrative Law Judge & Hearing Examiners, Legal Consultants", Certification Number 3495, dated February 21, 1980 [confirming that Banks was certified and authorized by the District of Columbia Government to utilize the title "Administrative Law Judge in 1980 and function as an "administrative trial advocate" as well as contract out as an "Administrative Law Judge"**; by the Government of the District of Columbia Minority Business Opportunity Commission, Charlotte G. Chapman, chairperson.

The District of Columbia Office of Employee Appeals changed the title "Hearing Examiner" to

of the DCRA and the DCCA are barred by the doctrines of res judicata, issue preclusion and collateral estoppel. Ash v. Swenson, 397 U.S. 436, 443-444.

INFERRED DUTY TO DISABUSE

5. DCRA-CPPA and D.C.C.A.'s incorporation of DCCA Rule 49 by reference into the provisions of the DCRA Consumer

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"Administrative Judge" pursuant to Memorandum of Warren M. Cruise, Esq. Executive Director of District of Columbia Office of Employee Appeals, dated November 8, 1991, providing:

> "Re: Title Change of Hearing examiners. Beginning November 12, 1991, the title of "Hearing Examiner" is to change to "Administrative Judge". This change should be made on all outgoing documents which now contain the title "Hearing Examiner". Decisions written on or after November 12, 1991 should reflect this title change." [confirming that the District of Columbia Government had changed the title "Hearing Examiner" to "Administrative Judge," thereby using the titles interchangeably]

Protection Procedures Act as applied to Petitioner to support the inferences drawn by DCRA, whereby the Petitioner is presumptively required to disabuse the entire public from believing that he is the functional equivalent of a lawyer, advocate, administrative advocate although such a requirement is not contained in the regulations of DCRA-CPPA or DCCA Rule 49. Nevertheless this presumptive-inference and requirement, is arbitrary, capricious, an abuse of discretion, unconstitutional, and violates Banks' rights under the Due Process Clause, the Equal Protection Clause, 42 U.S.C. § 1983, and the requirement operates as municipal policy, a burden upon Banks' rights under the

First Amendment.[12]

6. D.C.C.A. Rule 49, as applied to Banks, at all times relevant, and as incorporated by reference in the decision of DCRA and the Court, is overly broad, unconstitutional, and abridges Banks' rights under the First, Fifth and Fourteenth Amendment of the United States Constitution and the Privileges and Immunities

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[12] In 1979 Congress extended Section 1983 to make it available as a remedy for deprivations of federal rights by officials acting under color of the laws of the District of Columbia. Pub. L. No. 170, § 1, 93 Stat. 1284 (1979). In amending Section 1983 Congress intended to put citizens of the District of Columbia on the same footing as citizens of the states. **See**, e.g. , H.R. Rep. No. 96-548, 96th Cong., 1st Sess. 1 (1979)(purpose of legislation is "to give citizens of the District of Columbia rights equal to those of citizens in the states and territories of the United States"). Congress thus intended that federal jurisdiction should extend to vindicate the federal rights of citizens of the District of Columbia in the same way it extends to citizens of the states.

In a case such as the instant case where the official policy is to selectively and discriminatorily enforce D.C.C.A. Rule 49 and DCRA-CPPA and other laws against Banks, the court has held such official policy unlawful. **See** Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690 (1978), **See also** Pembour v. City of Cincinnati, 475 U.S. 469.

With respect to offenses against the First Amendment, See Minneapolis Star & Tribune Co. v. Minnesota Comr. of Revenue, (1983) 460 U.S. 575.

Clause, and operate as a restraint on the liberty of contracts.[13]

7. The District of Columbia Court of Appeals, has, on an on-going and continuous basis, thru James Schaller and Stuart Pierson, acted as lobbiest, legislatures, investigators, prosecutors, and alleged disinterested designees, with respect to Banks in the selective enforcement of D.C.C.A. Rule 49, from 1984 to the present date, directly and indirectly through retroactive laws it facilitated, including DCRA-

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[13] operates as an unreasonable restraint on the liberty of contract in violation of U.S.C.A. Const. Amend 5. See Careleton Screw Products Co. v. Fleming, C.C.A. Minn. (1974), 126 F.2d 537, and D.C.C.A.'s action violates Banks rights under the Privileges and Immunities Clause. See Friedman v. Supreme Court of Virginia, 822 F.2d 423, U.S.C.A. Const. Art. 4, § 2, Cl. 1.

CPPA [to mirror DCCA Rule 49] while its employees, James Schaller, Jay Resnick, Stuart Pierson and the District of Columbia Court of Appeals Committee on Unauthorized Practice of Laws, utilized their official positions and influence to coerce District of Columbia Regulatory Agencies, including but not limited to the District of Columbia Consumer and Regulatory Affairs, to change their respective laws from affording non-members of the District of Columbia Bar the right to represent parties before administrative agencies, to precluding all but white lawyers and members of the District of Columbia Bar from representing parties before administrative agencies. See Banks v.

Aubrey H. Edwards, D.C. Cir. No. 94-5058 [1994], and Banks v. Teitelman, et al, D.C. Cir. No. 94-5057.

8. The District of Columbia Court of Appeals with respect to Banks, at all times relevant, has subjected Petitioner to review by an appellate body with diminished impartiality a conflict of interest,[14] and an institutional bias. The DCCA has either boycotted review in banc, and/or successively issued decisions based on self-serving inferences drawn upon barebone conclusions of DCCA against its

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[14] See United States v. Murphy, 768 F.2d 1518 (7th Cir. 1985), cert denied, 106 S.Ct. 1188, Hall v. Small Business Administration, 695 F.2d 175 (5th cir. 1983), holding that a judgment should be set aside retroactively where there has been actual bias. See Ward v. Village of Monroeville, Ohio, 409 U.S. 57, 60 (1972); Roberts v. Bailar, 625 F.2d 125 (6th Cir. 1980).

precedental holdings as it relates to standards for review coupled with the fact that DCCA is represented by the same attorneys, D.C. Corporation Counsel, that represent DCRA in civil suits filed by Banks in 1989, Banks v. District of Columbia, et al, 89-0871; Banks v. Edwards [DCRA], D.C. Cir. No. 94-5058, and in the case of Banks v. Teitelman, et al, D.C. Cir. 94-5057, where the Petitioner has sued the DCCA, its Committee, employees and the District of Columbia Government for in excess of $1 Billion Dollars with no prayer for monetary relief against the DCCA, for condoning the operation of a racketeering organization, [RICO] out of the the offices of the District of Columbia Court of Appeals, in restraint of competition, in violation of the RICO Action and in violation of the Sherman Act, for retroactive rulemaking and for conspiracy to deprive Banks of civil rights, by its volunteer attorneys serving on the DCCA-CUPL, whom are in competition with Banks in the marketplace.

An example of abuse of authority and misuse of official position to influence Banks clients in interstate commerce to initiate a complaint against Banks by using the DCCA's decision in Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883 [December 6, 1993] as a catalyst to procure subornation of perjury. See Pierson's letter to Cooper, dated December 8, 1993 [two days subsequent to issuance of the decision by the DCCA] a resident of the State of Georgia.[15]. The DCCA employees James Schaller and Stuart Pierson [Chairmen of DCCA-CUPL, respectively, acted as lobbiest to facilitate the promulgation DCRA-CPPA of

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[15] Stuart Pierson, Chairman of District of Columbia Court of Appeals, wrote to Banks' client C. Roger Cooper, whom resides in the State of Georgia, urging him, two days subsequent to the D.C.C.A.'s decision dated December 6, 1993 in **In Re Simon Banks v. DCRA** 91-AA-883, referencing DCRA's retroactive legislation Consumer Protection Procedures Act, by stating as follows:

> "In the case of Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883 (DCCA, December 6, 1993), the Court held that members of the public like you may recover money paid to people like Banks who solicit the money on the basis of a misrepresentation that they are the functional equivalent of a lawyer."

1991, after Petitioner, in his Petition for Writ of Certiorari, appealing the case of In re Simon Banks, 561 A.2d 158. [Petition was filed one day late] alleged that the DCCA that did not have jurisdiction or standing in the case, and that only the DCRA may have standing. Thereafter, DCCA Committee on unauthorized Practice of Law, conspired with DCRA to promulgate DCRA Consumer Protection Procedures Act and incorporate language similar to DCCA Rule 49, that included lay representatives and excluded attorneys from its preclusive provisions. Thereby subjecting Petitioner to selective and discriminatory enforcement of DCRA-CPPA retroactive rules, designed to nullify Petitioner's clearly established rights under federal laws providing for equal civil rights. This combination consisted of DCCA and DCRA which was a combination established to facilitate a boycott of Petitioner's federal rights to represent parties before administrative agencies agencies.[16]

9. The conclusion of the DCRA at ¶10, of the ALJ's decision concluding that Banks is a Merchant, while excluding lawyers and

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[16] The Supreme Court has defined a boycott at, St Paul Fire & Marine Insurance Co. v. Barry, 438 U.S. 531 (1978, United States v. South Eastern Underwriters Assn., 322 U.s. 533 (1944), as:

> "...refusals to deal involving the coordinated action of multiple actors..""..To boycott means to combine in refusing to hold relations. See Family Division Trial Lawyers v. Moultrie, 725 F.2d 695, 701 (D.C. Cir. 1984).

attorneys not licensed to practice law in the District of Columbia from this label, is discriminatory, arbitrary, capricious and an abuse of discretion, not supported by any compelling state interest, and it is in violation of rights protected by the First Amendment, 42 U.S.C. § 1983, and 42 U.S.C. § 1981.

10. The DCCA's conclusions at Pg. 9 of its decision, citing DCRA's findings of fact at ¶2 of the decision providing:

"Complainant, believing Respondent to be a lawyer, stated that Respondent made no distinction between himself and that of a lawyer," constitute retroactive rulemaking, is arbitrary, capricious, an abuse of discretion, and not supported by any standard or requirement of DCRA-CPPA,

the evidence set forth on the record which requires Petitioner to disabuse clients from their beliefs, particularly where there is no evidence of any misrepresentation. Moreover, the DCRA Administrative Law Judge has not identified the basis or any explanation to support the conclusion. In addition, it appears that the DCCA and the DCRA are attempting to enforce universal bar rules [worldwide] against Petitioner, not just the requirements of DCCA Rule 49.

Moreover, the DCCA's conclusions at ¶2 of its decision, providing:

"DCRA's finding that Hodges "believ[ed] Respondent was a lawyer" was clearly erroneous, in light of Hodges' testimony. See supra at 4. But the related finding is supported by the record: Hodges testified (and DCRA implicitly found) that Banks "made no distinction between himself and that of a lawyer." In short, the record supports DCRA's finding that Banks misrepresented himself as the functional equivalent of a lawyer, see Finding of Fact 2 ("no distinction between himself and that of a lawyer"), an action that parallels the behaviour this court found so significantly misleading that we permanently enjoined Banks from holding himself out not only as a "lawyer"

or "counselor" but also as an "advocate" or an "administrative advocate." See Finding of Fact 8; supra note 4. DCRA's finding that Banks misrepresented himself as an advocate with skills equivalent to those of a lawyer adequately supports DCRA's conclusion that Banks violated D.C. Code § 28-3904(a),(b) and (d).."

Clearly, the DCCA was acting out of a predisposition of bias, implicitly enforcing its own rule, DCCA Rule 49, rather than as disinterested-impartial adjudicators, seeking to justify its conclusions by inferences rather than facts found, based upon the on-going and continuous requirement that Banks disabuse the world from believing (a) that he is the functional

equivalent of a "lawyer", "administrative law judge," "administrative advocate", "advocate", "counselor", "administrative trial advocate" based solely upon the contention that in order to exercise rights arising under federal laws and state statutory laws, First Amendment Speech Rights, and in order to avoid prosecution under DCRA-CPPA, or as a precondition for Petitioner making or inferring such claims Banks is required to be a licensed member of the District of Columbia Bar. The DCCA and the DCRA is thereby unfairly burdening Banks' First Amendment rights and subjecting Banks to selective prior restraint, restraint on liberty and unlawful censorship, offensive to the First

Amendment.[17]

In addition, the findings and conclusions constitute prior restraint, an abridgement upon Banks' protected speech and First Amendment Rights, censorship, and the conduct is preempted by federal law.[18]

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[17] See New York Times Co. v. United States (1971) 403 U.S. 713, finding censorship unconstitutional. See Monro v. Socialist Workers Party (1986) 479 U.S. 198, such requirement ought to be subjected to more intense scrutiny. See Williams v. Rhodes 1968) 393 U.S. 23. This conduct further offends the right of "Freedom to Associate". See NAACP v. ALABAMA (1958) 357 U.S. 449. In Meyer v. Nebraska (1923) 262 U.S. 390, the Court struck down a state statute prohibiting the teaching of German to any pre-9th grade student, holding that the term "liberty" included, among other things, the right to "acquire useful knowledge" and engage in "common occupations of life." The Court said the Nebraska statute arbitrarily and unreasonably interfered with that liberty to the degree that due process protections of the Fourteenth Amendment had been violated.

[18] These unwarranted speech restrictions have been held unconstitutional by the Courts. D.C.C.A.'s continuing injunction precluding Banks from using his former title "Administrative Law Judge", while it permits the employees of the District of Columbia Office of Employee Appeals and the District of Columbia Consumer and Regulatory

The decision of DCRA at ¶12 and ¶13, finding that the agency had established good cause for its delay of some two years before

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Affairs Agency, to change the name of its "Hearing Examiners" to "Administrative Law Judge", without punishment or similar prohibition, operates as an unreasonable restraint on the liberty of contract in violation of U.S.C.A. Const. Amend 5. See Careleton Screw Products Co. v. Fleming, C.C.A. Minn. (1974), 126 F.2d 537, and D.C.C.A.'s action violates Banks rights under the Privileges and Immunities Clause. See Friedman v. Supreme Court of Virginia, 822 F.2d 423, U.S.C.A. Const. Art. 4, § 2, Cl. 1.

D.C.C.A.'s discriminatory enforcement of Rule 49 against Banks violates Article IV, § 2 of the Constitution which provides:
"Citizens of each state shall be entitled to all privileges and immunities of Citizens of the several states." See New Hampshire v. Piper, 470 U.S.284."

Further, D.C.C.A.'s discriminatory enforcement of D.C.C.A. Rule 49, does not bear a substantial relationship to the District of Columbia Government's ligitimate/rational objectives. Piper, supra, 470 U.S. at 284, 105 S.Ct. at 1279; United Building & Construction Trades Council v. Mayor & Council of Camden, 465 U.S. 209, 104 S.Ct. 1020.

"Congress intended doctrines of federal law uniformly to prevail over inconsisgtent local rules," Republic Steel Corp. v. Maddox, 379 U.S. 650, 653, 85 S.Ct. 614 (1964).

"Federal regulations preempt state law or municipal ordinance. U.S. ex rel. Goodwin v. Karnuth, D.C. N.Y. 1947, 74 F. Supp. 660., See Alexander v. Gardner-Denver Co., 415 U.S. at 36, Rachel v. State of Ga., 86 S.Ct. 1783

serving the complaint upon the petitioner, is arbitrary, capricious and an abuse of discretion, and a violation of the good faith requirement of 16 DCMR 1503.4 and 1503.5, which requires that DCRA file a petition before the Office of Adjudication "within 180 days after the complaint is filed, absent good cause for the delay." For the administrative judge to accept the agency's reason that it had the wrong address of petitioner as the basis for the delay, is frivolous, arbitrary, capricious; an abuse of discretion and a violation of petitioner's right to due process, procedural fairness, and equal protection.

The decision of DCRA at ¶14, concluding

that Petitioner has established that Petitioner's use of the title "administrative advocate" and rendering of legal advice misrepresented that his services had a sponsorship, approval, certification, characteristic, and were of a particular standard, or quality when it did not in violation of D.C. Code, Sec. 28-3904(a), (b) and (d), is violative of the First Amendment, Speech and Association, and the findings and conclusions are arbitrary, capricious, an abuse of discretion and not supported by any applicable standard, factual findings or substantial/preponderant evidence in the record.

Based on the record coupled with the failure of the agency to explain the basis of its

conclusions, the DCCA had a duty to ramand or vacate the decision of the DCRA. The D.C. Circuit, in Mcgregor Printing Corporation v Ira Kemp; Committee For Purchase From The Blind And Other Severely Handicapped; National Industries For The Blind; The United States of America, No. 92-5375, at 11 [Decided April 19, 1994] that: "Under the Administrative Procedure Act, a reviewing court must "hold unlawful and set aside agency action" that is "arbitrary" and "capricious"...."In informal rulemaking cases, three questions are often considered under this heading: (1) whether the rulemaking record supports whatever factual conclusions underlie the rule; (2) whether the policy determinations behind the rule are rational; and (3) whether the agency has adequately explained the basis for its conclusion.[19]

Nowhere in the decision, findings of fact and conclusions of law has the Admnistrative Law Judge explained or pointed to any evidence of factual findings that shows what she based her decision on.

The decision and conclusions of the DCRA at ¶15, are arbitrary and capricious and not supported by substantial evidence or a preponderance of evidence on the record, and similarly the conclusions of the DCCA is arbitrary, capricious and an abuse of discretion.

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[19] See Administrative Conference of the United States, A Guide to Federal Agency Rulemaking 323 (2d ed. 1991); See also Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc., 419 U.S. 281, 285 (1974); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971); Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962); Consumer Union v FTC, 801 F.2d 417, 422 (D.C. Cir. 1986).

The decision and conclusions of the DCRA at ¶17, are arbitrary and capricious and not supported by substantial evidence or a preponderance of evidence on the record. Likewise, the DCCA's conclusions are arbitrary and capricious, and similarly the decision of the DCCA are arbitrary and capricous and an abuse of discretion.

SCOPE OF REVIEW LIMITS THE DCCA TO REVIEWING AGENCY'S ACTIONS

The DCCA has gone outside of its scope of review, when it failed to determine whether the agency's conclusions were supported by the facts in the record, where the agency concluded without support, based upon inferences drawn from inferences drawn, that Banks' conduct indicated that he is the functional equivalent of a lawyer, DCRA asserting that Banks is not. This conclusion is nonsensical and barebone. See SEC v. Chenery Corp., 318 U.S. 80, 94 (1943).[20]

The court failed to ascertain the standards, the criteria and the evidence submitted in the record upon which the agency relied in support of its conclusions. Nowhere does the DCRA point to any requirement of DCRA-CPPA that requires Banks or any perceived "merchant" to state to all customers/clients that he/she is less efficient, less proficient, competent, less skilled, than others that are licensed by the District of Columbia, in order to comply with DCRA-CPPA requirements. The inference and suggestion that such a requirement exist is also unconstitional and an abridgement of the First, Fifth, Fourteenth Amendment of the Constitution.

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[20] "..for courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review." Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420 (1971).

The court of appeals' decision upholding the decision of DCRA is an abuse of discretion and based on unreasonable and capricious grounds. See Zimmerman v. State, 628 A.2d

The decision of the DCCA is arbitrary and capricious and not supported by substantial evidence, nor has the ALJ pointed to the facts found and inference drawn in support of the conclusions reached. Bowen v Unemployment Compensation Bd. of Review, 628 A.2d 513. See Buggay v. W.C.A.B. (Mellon Banks, N.A.), 628 A.2d, AFL-CIO-CLC, Local Union 14534 v. N.L.R.B., 983 F.2d 240, 299 U.S. App. D.C. 215, rehearing denied.

The determinations of question of law has not previously been subjected to judicial scrutiny, and the agency, DCRA, is not entitled to special defference, because this is the first case regarding such findings and these findings have not previously been reviewed. Department of Administrative Services. v. Employees Appeal Board, 628 A.2d 957, 226 Conn. 670.

The court below, in reaching its conclusions, has failed its duty to undo the action simply because the agency [DCRA] has failed to provide a reasoned explanation to support its conclusions, or where the record belies the agency's conclusions. See American Tel. & Tel. Co. v. F.C.C., 974 F.2d 1351, 1354 (D.C. Cir. 1992). See David J. Checkosky, Norman A. Aldrich, Petitioners V. Securities and Exchange Commission, Respondent, D.C. Cir. No. 92-1396, at 51 [Decided May 20, 1994][21]

In addition to failing to support its conclusion with a reasoned explanation, the DCRA treated Petitioner in a dissimilar manner from the way it treated white attorneys not licensed to practice law in the District of

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[21] The Court has failed its duty to: satisfy itself that the agency has "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" See State Farm, 463 U.S. at 43, 103 S.Ct. at 2866 (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168, 83 S.Ct. 239, 246, 9 L.Ed. 2d 207 (1962). Stated most simply, our task is to determine "whether the agency's decisionmaking was 'reasoned,'" American Horse Protection, 812 F.2d at 5, i.e. whether it considered the relevant factors and explained the facts and policy concerns on which it relied, and whether those facts have some basis in the record. See National Treasury Employees Union v. Horner, 272 U.S. App. D.C. 81, at 89 (1988)

Columbia whom, like Petitioner, regularly represent parties before administrative agencies of the United States. See: Petroleum Communications, Inc., Petitioner v. Federal Communications Commission, United States of America, Respondents, D.C. Cir. No. 92-1670, (Decided May 13, 1994), at 16, providing:

"We have long held that an agency must provide adequate explanation before it treats similarly situated parties differently.:" See, e.g., New Orleans Channel 20, Inc. v. FCC, 830 f.2D 361, 366 (D.C. Cir. 1987); Public Media Center v. FCC, 587 F.2d 1322, 1331 (D.C. Cir. 1978); Melody Music, Inc. v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965). American Petroleum Inst. v.

EPA, 906 F.2nd 729, 742 (D.C. Cir. 1990): Advanced Micro Devices, 742 F.2d at 1542-43, 1544.

The D.C.C.A's interpretation of District of Columbia Consumer Regulatory Affairs Agency [Hereinafter "DCRA]" DCRA's statute and the Consumer Protection Procedures Act, D.C. Code §28-3904, § 28-3903-§3905, [Hereinafter "CPPA"] is arbitrary, capricious and merely an unwarranted extension of the DCRA/CPPA law.

The Supreme Court has addressed the issue of statutes that are overly drawn as precluding judicial review where the court has no meaningful standards against which to judge the agency's exercise of discretion, as is the case in the instant case. See Citizens to Preserve Overton Park v. Volpe, 401 US.402, [1971]. See Heckler v. Chaney, 470 U.S. 821, 830, 105 S.Ct. 1649, 1655, 84 L.Ed. 2d 714 (1985). The Court repeated the above quoted passage from its Overton Park decision, and restated its conclusion, addressing judicial review of statutes that are so broadly drawn that there is no law at all to apply, At 410, and at 91 S.Ct. at 821, and at 470 U.S. 830, 105 S.Ct. at 1655.

The DCRA/CPPA law is a retroactive law, utilized by DCRA and DCCA to deprive Banks of vested rights contained in the rules of administrative agencies of the District of Columbia and contained in the federal rules, regulations, Executive Orders, and practice procedures of administrative agencies. The decision was designed and authored by the DCCA CUPL and DCRA to retaliate against Banks for engaging in protective conduct including filing complaint against Lacy Streeter, in 1983-84 in connection with the grievance complaints of a former employee, and in retaliation against Banks for filing suit against DCRA in 1988, in the Superior Court of the District of Columbia for retroactive rulemaking, changing the rules of DCRA Rental Housing Commission to discriminatorily exclude Banks on the basis of his race, from representing clients before the very agency he served as Chief

Administrative Law Judge, the District of Columbia Commission on Human Rights, and the agency that Petitioner was hired as Chief of Eviction Adjudication, and for filing suit against DCRA and DCCA in 1989, Banks v. Edwards, USCA, D.C., No. 94-5058.[22] a/k/a Banks v. Dixon, et al, No. 91-3099. [Subsequently retitled by USCA as Banks v. Edwards, et al D.C. Cir. No. 94-5058], and for filing suit against the DCCA-CUPL and Stuart Pierson in Banks v Teitelman, D.C. Cir. No. 94-5057. The Court below has defined retroactive rulemaking.[23]

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[22] See Petitions for Writs of Certiorari, In Re Simon Banks, 92-652, and 92-SP-652, pgs. 3, 16-22, 32, 63.

[23] The Court has defined retroactive rulemaking. See Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988). The Courts have held that a rule is retroactive if it takes away or

The Court's decision with respect to each finding and each conclusion, is arbitrary, capricious, and not supported by the facts provided by the agency. [24] The Court has

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impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty. or attaches a new disability in respect to transactions or considerations already past." **See** Schools v. Alexander, 979 F.2d 859, 864 9D.C. Cir. 1992)

[24] The DCRA has cited no precedents, indeed there is reason to believe that there are none to support its decision and the case ought to be vacated as arbitrary and capricious.

The Court further provided in * **David J. Checkosky, Norman A. Aldrich, Petitioners V. Securities and Exchange Commission, Respondent, D.C. Cir. No. 92-1396, at 51 [Decided May 20, 1994]:** "The Supreme Court held long ago that "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." Webster v. Fall, 266 U.S. 507, 511 (1925). **See also** Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 183 (1979); Stapf v. United States, 367 F.2d 326 330 (D.C. Cir., 1966).

"On the other hand, when we have confronted the question, our decisions uniformly--and quite firmly--hold that 706(2)(A) requires us to vacate the arbitrary and capricious agency action. In decision after decision, we have held that under 706(2)(A), the reviewing court "must" set aside such agency action.* As we held in Midtec Paper Corp. v. United States , 857 F.2d 1487, 1497 (D.C. Cir. 1988)(emphasis added),"[p]ursuant to the

substituted its decision for the agency. The Court's have addressed similar determinations regarding review of agency decisions. See Motor Vehicle Manufacturers Ass'n v. State

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Administrative Procedure Act, courts are instructed always to 'hold unlawful and set aside agency action, findings and conclusions found to be ... arbitrary [or] capricious....' 5 U.S.C. § 706(2)(A)."

"Furthermore, the Supreme Court has interpreted § 706(2)(A) to mean what it says. In one of its leading administrative cases, the Court held this: "In all cases agency action must be set aside if the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory procedural, or constitutional requirements. 5 U.S.C. §§ 706(2)(A), (B), (C), (D)." Citizens to Preserve Overton Park, Inc. v. Volve, 401 U.S. 402, 413-14 (1971) (emphasis added). The Court in Camp v. Pitts, 411 U.S. 138, 142-43 (1973), said much the same, holding that if a "finding is not sustainable [under § 706(2)(A)] on the administrative record made, then the [agency's] decision must be vacated and the matter remanded... for further consideration." **See also** NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 804 (1990)(Scalia, J., dissenting)("Among the attributes of formal adjudication relevant here, ...a reviewing court must 'hold unlawful and set aside agency action, findings, and conclusions found to be...unsupported by substantial evidence.'"); Bureau of Alcohol, Tobacco & Firearms v. FLRA, 464 U.S. 89, 97 n.7 (1983); Sytryker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 226, 229 (1980).

Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L. Ed. 2d 443 (1983). See Motor Vehicles Manufacturers Ass'n v. Ruckelshaus, 719 F.2d 1159, 1164 (D.C. Cir. 1983).

[25] Banks', in the capacity of Administrative Judge for the D.C. Commission on Human Rights, judging and adjudicating EEO complaints filed by Elgie Lewis, General Counsel of D.C. Office of Human Rights which included Judge Harold Banks of the EEOC and other attorneys, -- Banks performed as the functional equivalent of a judge. [Emphasis

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added] DCRA in its enforcement of DCRA-CPPA, does not infer that attorneys', not licensed to practice law in the District of Columbia, use of such titles/terms such as: "administrative advocate", "attorney," "advocate,""administrative law judge,""judge," "counsel," "esquire" are considered to mislead the lay public into believing that he/they are licensed to practice law in the District of Columbia, in violation of CPPA, or that such use violates CPPA simply because these attorneys are excluded from the provisions of CPPA and are excluded from the label of "merchant," thereby they are not covered. This conduct of DCRA and DCCA involves selective enforcement of symbolic speech.[26]

DCRA, is without jurisdictional authority to indirectly, inferentially or directly enforce DCCA Rule 49, by secredly adjusting its conclusions of law and findings of fact to fit the prohibitions of DCCA Rule 49, and thereafter sanctioning and charging Banks with violating DCRA CPPA law, as a pretext and disguise for punishing Banks for allegedly violating D.C.C.A. Rule 49, when Banks accurately used the title "Administrative Advocate", "Administrative Trial Advocate", and when Banks represents persons other than himself in matters of law before administrative agencies of the United States and of the District of Columbia. This action of DCRA and the DCCA, is pre-empted by federal laws, and are arbitrary and capricious and constitute surreptitious retroactive rulemaking. The conclusions of law are not supported by adequate findings of fact based on evidence in the record. Nor has the DCCA or the Administrative Law Judge of DCRA pointed to any facts upon which these conclusions are based. See Camp v. Pitts, 411 U.S. at 142.

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[26] In Tinker v. Des Moines Independent Community School Dist, (1969) 393 U.S. 503, the court rejected selective enforcement against symbolic speech. **See also** Coates v. Cincinnati (1971) 402 U.S. 611

The D.C.C.A. Court is over-reaching when it has acted to punish Banks for allegedly violating DCCA Rule 49 and the injunction, thru the DCRA. it cannot, because it is without jurisdiction to do so thru the DCRA, given its limited appellate jurisdictional authority.

It is without dispute that In 1980, the District of Columbia Government certified and licensed Banks as;

a) An Administrative Law Judge

b) An Administrative Trial Advocate

In 1975 thru 1978 the District Government declared Banks a Judge and an Expert in Employee and Discrimination Law.

The conclusion of the Court below and DCRA, concluding that Petitioner is not an "administrative advocate," "administrative trial advocate," "counselor," is barred by the Doctrine of res judicata, issue preclusion, collateral estoppel equitable estoppel and the constitution, the Equal Protection Clause the Equal Protection of Laws and like penalties. The privileges and immunity Clause. The injunction upon which DCRA relies on is flawed on the basis that it too, is not supported by substantial evidence on the record.

The recent change in the title "Hearing Examiner" to "Administrative Judge", and "Administrative Law Judge" by the District of Columbia Office of Employee Appeals and the District of Columbia Consumer and Regulatory Affairs, warrants an alteration of the injunction set forth by the Court in In re Simon Banks, 561 A.2d 158, precluding Banks from using the Title "Administrative Law Judge" when referring to any "Hearing Examiner" position, based upon the contention that the District of Columbia Government had not adopted the change in title.

The Court has substituted its decision for the agency. The Court's has addressed similar determinations regarding review of agency decisions. See Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co.,, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L. Ed. 2d 443 (1983). See Motor Vehicles Manufacturers Ass'n v. Ruckelshaus, 719 F.2d

1159, 1164 (D.C. Cir. 1983).

The Court must... satisfy itself that the agency has "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection getween the facts found and the choice made.'" See State Farm, 463 U.S. at 43, 103 S.Ct. at 2866 (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168, 83 S.Ct. 239, 246, 9 L.Ed. 2d 207 (1962). Stated most simply, our task is to determine "whether the agency's decisionmaking was 'reasoned,'" American Horse Protection, 812 F.2d at 5, i.e. whether it considered the relevant factors and explained the facts and policy concerns on which it relied, and whether those facts have some basis in the record. See National Treasury Employees Union v. Horner, 272 U.S. App. D.C. 81, at 89 (1988)

Notwithstanding the D.C. App. Ct.'s ruling in Brookings, supra. the D.C. Appeals Court's enforcement of Rule 49 against Banks' authorized representation of clients before administrative agencies, is discriminatory, selective and conflicts with federal laws and rights arising under federal laws.[27] The

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[27] CIVIL SERVICE REFORM ACT

The Civil Service Reform Act of 1978 (CSRA or Act), 5 U.S.C. §§ 7501-7543, Pub. L. No. 95-454, 92 Stat. 111 (codified as amended by 5 U.S.C. §§ 1101-8913) See Legislative History of the Civil Service Reform Act of 1978, at 636, 639 (Comm. Print 1979) provide that federal employees are entitled to be represented by any person of their choosing and that person does not have to be an attorney.

DCCA-CUPL's prosecution of Banks for violating D.C. App. Ct. R. 49, discriminatorily violates Banks constitutional rights and Banks' rights protected by the 1964 Civil Rights Act providing for equal civil rights.

The D.C.C.A's-CUPL's prosecution of Banks for violating D.C.C.A's Rule 49 is violative of the Supremacy Clause and the Pre-emption Clause.[28]

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[28] These actions by the D.C.C.A., the CUPL, the DCRA, violates the Supremacy Clause. The Court has stated: "States have oblgation, under supremacy clause, to protect federally guaranteed civil rights as zealously as would federal courts. Rachel v. State of Ga., 86 S.Ct. 1783; "State law is in conflict with federal statutes, and void under this Clause, if it stands as an obstacle to accomplishment and execution of full purposes and objectives of Congress. Finberg v. Sullivan, 634 F.2d 50; The Supreme Court opined, "..valid federal laws are part of supreme law of the land, and a state cannot discriminate against rights created by or arising under such laws. Caldwell v. Alabama Dry Dock & Shipbuilding Co., C.C.A. Ala. 1947, 161 F.2d 83, certiorari denied 68 S.Ct. 59.

"When federal law is passed under authority of Constitution, it is supreme, and state law in

The D.C.C.A.-CUPL in its enforcement of D.C. App. Ct. Rule 49 arbitrarily, irrationally fail to credit or follow the rules of the administrative agencies providing for lay representation of parties before D.C. Office of Employee Appeals [D.C. OEA], D.C. Office of Human Rights, the EEOC and the Merit Systems Protection Board and Administrative Agencies of the United States, in violation of law.[29] The District of Columbia Court of

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conflict therewith must yeild. Pritchard v. Downie, D.C. Ark. 1962, 201 F. Supp. 893, affirmed 309 F.2d 634. **See Alexander v. Gardner-Denver Co., 415 U.S. at 36.**

[29] COURT OF APPEALS REQUIRED TO FOLLOW AGENCY'S CONSTRUCTION OF STATUTE IF THAT CONSTRUCTION IS REASONABLY DEFENSIBLE

The Court of Appeals was obliged to follow construction of statute by agency charged with its administration if that construction was "reasonably defensible." 5 U.S.C.A. §§ 7511, 7512(A-E), 7514.

Appeals opined, in Wallace v. District of Columbia Unemployment Compensation Board, D.C. App., 289 A.2d 885 (1972), District of Columbia Agencies must comply with the DCAPA -- specifically, D.C. Code, §1-509(d), when enforcing conflicting rules and grant the parties their appropriate procedural rights -- that any conflicting practices were superseded by the DCAPA.

The DCCA and the DCRA in its respective decisions, infers that Petitioner by holding out as authorized to represent clients before

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See Nat. Treasury Employees U. v. U.S. Merit Systems, 743 F.2d 895, at 898 (1984), and connected with the Congressional intent. See Sutherland Statutory Construction § 62.01, at 111 (4th Ed. 1986) U.S. v. Bonanno Org. Crime Fam. of La Cosa Nostra, 879 F.2d 20, at 21 n.1 (2nd Cir. 1989.

administrative agencies, is concluded to be practicing law without a license, thereby requiring Banks to possess a license to practice law as a prerequisite to providing representation to clients before administrative agencies.

The decision of DCCA and DCRA is violative of the Equal Protection Clause of U.S.C.A. Const. Amend 14 §1.[30], it deprives Petitioner of equal protection of classification, laws, enforcement, penalties, burdens, as well as retroactivity of laws that impairs established contracts in violation of 42 U.S.C. § 1981. See Schwab v. Doyle, 258 U.S. 529, 537 (1922).

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[30] The Equal Protection Clause of U.S.C.A. Const. Amend 14 §1, is a "Law Providing Equal Rights" within meaning of 28 U.S.C. § 1443. See Dedd v. Rue, D.C. Ohio 1979, 478 F. Supp. 975.

CONCLUSION

Petitioner request this Honorable Court reverse the decision of the District of Columbia Court of Appeals, and determine the consitutionality of the District of Columbia Consumer Protection Procedures Act and the constitutionality of the District of Columbia Court of Appeals Rule 49 on Unauthorized Practice of Law.

The Petitioner further request this Honorable Court vacate the injunction issued by the District of Columbia Court of Appeals in In Re Simon Banks, 561 A.2d 158 (D.C. Appeals, 1987).

DISTRICT OF COLUMBIA
COURT OF APPEALS

Feb 4, 1994

No. 91-AA-883

SIMON BANKS,

Petitioner

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS,

Respondent.

BEFORE: **Rogers, Chief Judge; *Ferren, Terry, **Steadman
Schwelb, Farrell, Wagner, King, and Sullivan, Associate Judges;
*Pryor, Senior Judge.

O R D E R

On consideration of petitioner's petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED tht the petition for rehearing en banc is denied.

PER CURIAM

** Chief Judge Rogers and Associae Judge Steadman have recused themselves from this case.

Copies to:

Mr. Simon Banks
468 M Street, S.W.
Washington, D.c. 20024

Charles L. Reischel, Esquire
Deputy Corporation Counsel

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS OFFICE OF ADJUDICATION
613 G STREET, N.W., SUITE 729
P.O.BOX 37140
WASHINGTON, D.C. 20013-7200
[202] 727-7900

Aubrey H. Edwards, Acting Director
THE DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS

Petitioner,

On Behalf of: **OAD #91-0071-1**

Glenard N. Hodges

Complainant

vs.

Simon Banks t/a
Job Protectors

Respondent

JURISDICTION

This action was brought by the Petitioner, D.C. Department of

Consumer and Regulatory Affairs, pursuant to the Consumer Protection Procedures Act ("CPPA"), D.C. Code, sec. 28-3901 et seq. (1981 ed.).

Pursuant to the Reorganization Plan No. 1 of 1983 (effective March 31), DCRA has all powers formerly vested in the District of Columbia Office of Consumer Protection and is authorized to bring an action which seeks a remedy for violation of the Act.

GENERAL OVERVIEW

Ogla Clegg, Administrative Law Judge,

presided over the hearing in this matter on April 22, 1991. Bonni Bankhead, Counsel for Petitioner, presented Glenard Hodges, Complainant, as her only witness. Simon Banks, Respondent, did not appear for the hearing, was not reprsented by counsel, and did not file an answer to the complaint, although he was personallhy served with both complaint and summons on March 7, 1991, at 300 "I" Street, N.E., Suite 206, Washington, D.C. 20002. The petition alleges that the Respondent engaged in unlawful trade practice in violation of D.C. Code, sec. 28-3904 (a), (b), (d), (e), (q), and (u).

FINDINGS OF FACT

Based on the evidence of record, the

Administrative Law Judge finds as follow:

1. Complainant resides at 505 Etna Drive, Upper Marlboro, Maryuland. Complainant, an employee of the Washington Area Metropolitan Transit Authority (Metro), was experiencing problems on his job and contacted the Respondent after obtaining his name from a co-worker. On May 29, 1989, Complainant met with Respondent and was charged an initial consultation fee of $50.00. (Complainant's Testimony; and Gov't Ex. #1).

2. During consultation, the Respondent, trading as Job Protectors, Administrative Advocates, represented to Complainant that he was an Administrative Advocate. Respondent

informed Complainant that he had a case and would go through the "EEO" process, and purt a package together. Complainant, believing Respondent was a lawyer, stated that Respondent made no distinction between himself and that of a lawyer. (Complainant's Testimony; Gov't Ex. #4, #6; and Investigative Report).

3. Respondent telephoned Complainant at home and scheduled a second meeting for May 31, 1989. Respondent stated that time was of the essence, and in order to begin Complainant's case, the total cost of $2,000.00 for his services was due immediately. Respondent, however, agreed to a partial payment of $800.00.

4. Complainant met with Respondent on May 31, 1991, as scheduled and gave him a check in the amount of $650.00 and $150.00 in cash. Respondent then promised to give Complainant a contract after filing fees were paid and the initial paperwork had been completed. (Complainant's Testimony; and Gov't Ex. #2, #3, #4).

5. Shortly thereafter, Complainant cancelled Respondent's services and requested that the $800.00 in filing fees be returned. Respondent agreed to return Complainant's money by check the next day. Complainant has been unable to reach Respondent by phone or office visits. (Complainant's Testimony; Gov't

Ex. #3).

6. On June 28, 1989, Complainant filed a formal complaint against the Respondent with the Office of Compliance. Complainant also filed an EEO grievance with his employer in October 1989. (Complainant's Testimony).

7. The Respondent trading as Job Protectors, Administrative Hearing Advocates, is not authorized to do business in the District of Columbia as either a foreign or domestic corporation. Respondent's corporate name was reserved by application with the Corporation Division, DCRA, on July 22, 1986. (Gov't Ex. #6).

8. However, on November 23, 1987, the

District of Columbia Court of Appeals (No. 87-97) permanently enjoined and restrained aRespondent under Superior Court, Civil Rule 65 from the practice of law, holding out to the public that he is authorized to practice law in the District of Columbia; representing any person, other than himself; and using such terms to describe himself or his qualifications as "advocate," "administrative trial advocate," or any description referencing Respondent's former employment as a hearing examiner. (Gov't Ex. #5).

CONCLUSIONS OF LAW

9. Glenard Hodges is a "Consumer" and "Complainant" as defined in the CPPA,

D.C. Code, sec. 28-3904(a)(22) and (a)(4) (1981) ed.).

10. Respondent, Simon Banks t/a Job Protectors, Administrative Advocates, is a "Merchant" as defined in the CPPA, D.C. Code, sec. 28-3901 (a)(3) (1981) ed.). The Respondent has engaged in business in the District of Columbia.

11. A "trade practice" is defined in the CPPA, D.C. Code, sec. 28-3901 (a)(6) as any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services.

12. The CPPA, D.C. Code, sec. 28-3905 (e) (1981 ed.), requires that DCRA pursuant to 16 DCMR 1503.4 and 1503.5 file a petition before the Office of Adjudication "within 180 days after the complaint is filed, ...absent good cause for delay..." The record shows that the complaint was filed n July 7, 1989, and assigned to Investigator K.D. Meredith on September 21, 1989. Due to lack of clerical support and an incorrect address for the Respondent, the investigation was not completed until August 16, 1990. the case was then forwarded and assigned to Ms. Bankhead, Office of Compliance, Enforcement Division, DCRA, on September 17, 1990, for prosecution. On January 23, 1991, a

petition was filed with the Office of Adjudication when attempts to settle the matter in accordance with D.C. Code, sec. 28-3905(6)(e) proved unsuccessful.

13. This Administrative Law Judge finds sufficient good cause for delay in the filing of this petition beyond the 180 day requirement.

14. Petitioner has established by a preponderance of the evidence that Respondent's use of the title "administrative advocagte" and rendering of legal advice misrepresented that his services had a sponsorship, approval, certification, characteristic, and were of a particular standard, or quality when it did not in violation

of D.C. Code, sec. 28-3904(a), (b) and (d).

DCRA vs Simon Banks - #91-0071

15. The record further establishes that Respondent accepted $800.00 as partial payment for services he did not render in violation of D.C. Code, sec. 28-3904(e); failed to provide Complainant with a written contract in violation of D.C. Code, se. 28-3904(q); and failed to remit Complainant's money in the amount of $800.00 in violation of D.C. Code, sec. 28-3904(u).

TRADE PRACTICE VIOLATIONS

16. The Respondent has committed (6) trade practice violations as defined by D.C. Code, sec. 28-3904 et seq.

DAMAGES

17. The purpose of awarding damages is to put the Complainant in the same position as if there had been no breach. Fleming v. Twine, D.C. Mun. App., 58 A.2d 498 (1948). Compensatory damages can be measured by the out-of-pocket expenses incurred by the complainant due to the Respondent's unlawful conduct. The record shows that the Complainant tendered a sum of $800.00 to the Respondent for services that were never rendered. The Complainant, therefore, is entitled to receive an award of $800.00, plus interest.

ORDER

Upon consideration of the above Findings of Fact, Conclusions of Law, and the record herein, it is ORDERED

1. That the Respondent, Simon Banks, individually and t/a Job Protectors, shall pay Eight Hundred Dollars ($800), plus interest at the rate of ten percent (10%) per annum from the date of this Order, to the Complainant Glenard N. Hodges within thirty (30) days of receipt of this order, payable to Glenard N. Hodges.)

2. Furthermore, the Administrative Law Judge determines that, pursuant to CPPA, D.C. Code, sec. 28-3905(g)(4), having found no good cause to the contrary, the Respondent,

Simon Banks, t/a Job Protectors, is hereby ordered to pay $175.00 as court costs within forty-five days (45) days of receipt of this Order. (Such payment to be made by certified check or money order, payable to the D.C. Treasurer.)

3. Furthermore, the Respondent, is ordered to pay an assessment of $250.00 for each trade practice violation as determined above, for a total assessment of $1,500.00 within forty-five (45) days of receipt of this Order. (Such payment to be made by certified check or money order, payable to the D.C. Treasurer.)

4. Furthermore, the Administrative Law Judge determines that, pursuant to CPPA,

D.C. Code, sec. 28-4905(g)(4), having found no good cause to the contrary, the Respondent, Simon Banks, t/a Job Protectors, is hereby ordered to pay the Petitioner's reasonable costs for investigating, negotiating and presenting the case at the Administrative Hearing, provided that Petitioner shall submit and file a sworn statement of such costs to the Office of Adjudication and serve a copy on the Respondent (via U.S. First Class Mail, postage prepaid), no later than twenty (20) days from the date of this Order. Respondent shall have seven (7) business days to file any response or to challenge the amount of the costs.

5. All payments shall be submitted

either in person to the Office of Adjudication, Room 729, 613 G Street, NW, Washington, D.C., or mailed via U.S. First Class Mail, postage prepaid to DCRA - Office of Adjudication, Attn: Bettina Hall, Administrative Officer, 613 G Street, NW, Room 729, P.O. Box 37140, Washington, DC 20013-7200. If mailed, the envelope containing such payment must be postmarked by the U.S. Mail at least five (5) days prior to its due date.

6. Furthermore, that if the Respondent, Simon Banks, t/a Job Protectors, fails to pay the amounts described in paragraphs 1,2 and 3 of this Order within the time allocated and enforcement proceedings are required, that the

Respondent shall, in addition, be assessed an additional Seven Hundred Fifty Dollars ($750.00) for each trade practice the Respondent is found to have violarted, and shall bear the costs of any enforcement proceedings.

IT IS SO ORDERED THIS 8TH DAY OF JULY, 1991.

Olga Clegg
Administrative Law Judge, D.C.

ANY PARTY AGGRIEVED BY THIS DECISION AND ORDER HAS A RIGHT TO APPEAL TO THE DISTRICT OF COLUMBIA COURT OF APPEALS. AN APPEAL IF TAKEN, MUST BE FILED WITH THE COURT OF APPEALS WITHIN THIRTY (30 DAYS FROM THE DATE OF NOTICE OF

THIS DECISION, ACCORDING TO THE RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS.

July 10, 1991

I hereby certify that on this date true copies of the aforegoing were either mailed postage prepaid or caused to be delivered to the following -

Glenard N. Hodges
505 Etna Drive
Upper Marlboro, Md 20772
Complainant

Simon Banks
t/a Job Protectors
300 "I" St, NE - Suite 206
Washington, DC 20002
Respondent

Diana Haines, Chief
DCRA - OCOM
614 H St, NW - 11th Floor
Washington, DC 20001

Chester McKenzie, Acting Chief

DCRA-OCOM - Enforcement Division
614 H Street, NW (#804)
Washington, DC 20001

Bonni M. Bankhead
DCRA-OCOM - Enforcement Division
614 H St, NW (#804)
Washington, DC 20001

Donald J. Sheehy

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 91-AA-883

Simon Banks, Petitioner,

V.

District of Columbia Department of Consumer and
Regulatory Affairs,

Respondent.

Petition for Review of an Order of the District of Columbia Department of Consumer and
Regulatory Affairs

(Argued Septemeber 22, 1993 Decided December 6, 1993)

Simon Banks, pro se.

Mary L. Wilson, Assistant Corporation Counsel, with
whom John Payton, Corporation Counsel, and Charles L. Reischel, Deputy Corporation

Counsel, were on the brief, for respondent.

Before Ferren and Schwelb, Associate Judges, an Pryor, Senior Judge.

Opinion for the court by Associate Judge Ferren.

Opinion by Associate Judge Schwelb, concurring in part and dissenting in part, at p. ___.

Ferren, Associate Judge: Petitioner Simon Banks, who is not a lawyer, seeks reversal of a decision of the Department of Consumer and Regulatory Affairs (DCRA), which concluded that Banks had committed six unlawful trade practices in violation of the Consumer Protection Procedures Act, D.C. Code § 28-3904 (1991), by rendering legal advice to the complainant, Glenard N. Hodges. DCRA ordered Banks to pay $800 in compensatory damages plus interest to Hodges, $175 in court costs, $1,500 in civil penalties ($250 for each violation), and the reasonable costs expended by DCRA. See D.C. Code §§ 28-3903 (a)(13), 3905 (g)(2), 3905 (g)(4), 3905 (i)(3) (1991). Banks contends that DCRA exceeded its statutory authority.[1] Pursuant Act, D.C. Code § 28-3905

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[1] *Banks also makes various arguments that were not raised at DCRA. Specifically, he contends that DCRA has deprived petitioner of his right to equal protection under the law, his due process rights, and his rights under the Contract Clause and the Supremacy Clause of the United States Constitution. Banks also asserts that DCRA's actions violated the Privileges and Inmmunities Clause of the United States Constitution. Banks further contends that DCRA's actions constitute a "Regulatory Taking," a selective prosecution, a violation of the District of Columbia Ethics Act, and a violation of his privacy rights. Finally, Banks suggests tha DCRA, the District of Columbia Bar, and others have violated the Sherman Antitrust Act and are guilty of violating the Racketeering Influence Corrupt Organizations Act (RICO). "In the absence of exceptional circumstances, this court will not entertain contentions not raised before the agency."* ***Glenbrook Road Ass'n v. District of Columbia Bd. of Zoning Adjustment****, 605 A.2d 22, 33 (D.C. 1992). "Administrative and judicial efficiency require that all claims be first raised at the agency level to allow appropriate development and administrative response before judicial review." Hughes v. District of Columbia Dep't of Employment Servs., 498 A.2d 567, 570 (D.C. 1985). The circumstances of this case are not sufficiently exceptional to warrant our consideration of the issues Banks failed to preserve by presenting them to*

(i)(1) (1991), we review this decision under the District of Columbia Administrative Procedure Act, D.C. Code § 1-1510 (1992). We affirm in part and reverse in part.

I.

In 1987, this court, in response to a petition by its Committee on Unauthorized Practice of Law, concluded that Banks had violated the court's rule prohibiting the unauthorized practice of law, D.C. App. R. 49(b). See In re Banks, 561 A.2d 158 (D.C. 1987). Banks had graduated from law school in 1975 but had never become a member of any bar. Id. at 159.[2] This court permanently enjoined Banks from practicing law in the District of Columbia and from holding himself out to the public as someone authorized to practice law in the District. Id. at 167-68. In particular, we enjoined Banks from representing

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DCRA.

[2] Banks nonetheless had held the positionof hearing examiner at the District of Columbia Office of Human Rights in 1975-76 and later had held the same position at the District of Columbia Rental Accommodation Office. See In re Banks, 562 A.2d at 159.

himself as a "lawyer," attorney," "counsel," "advocate," "administrative law judge," or "administrative trial advocate." Id. at 168.

Glenard Hodges filed a complaint against Banks on June 28, 1989, with DCRA's Office of Compliance. In that complaint, Hodges claimed that on May 31, 1989, he had paid Banks, who was doing business as "Job Protectors," $800 to file a harassment complaint with Hoges' employer. Hodges also asserted that he had cancelled Banks' services before Banks performed any work, that Banks had promised to refund Hodges' money, and that Hodges had never received the refund.

A DCRA investigator conducted a telephone interview with Hodges around March 7, 1990, and interviewed Banks on June 7, 1990. The investigator's report, completed on August 14, 1990, determined that there was enough evidence that Banks had committed trade practice violations to warrant referral to the Enforcement Division of DCRA's Office of Compliance. On January 23, 1991, that Office filed a petition with DCRA's Office of Adjudication alleging that Banks had violated the Consumer Protection Procedures Act and seeking relief on Hodges' behalf. The petition specifically claimed that Banks had "charged Complainant legal fees[,]...told Complainant that he knows the law[,]...that he was an expert in job protection[,]...[and] that he does basically everything that a lawyer does."

The Office of Adjudication held a hearing on April 22, 1991. Although Banks was served with a summons, he did not appear at the hearing. Hodges testified that he had been having problems with his job at the Washington Metropolitan Area Transit Authority and that he had telephoned Job Protectors for help in May 1989. During this phone conversation, Banks told Hodges that there would be a $50 consultation fee, and Hodges agreed to meet with Banks.

Hodges then testified to the events that took place at his meeting with Banks on May 29, 1989. Banks told Hodges that Hodges had an Equal Employment Opportunity (EEO) case and that Banks would begin preparing the package to file with EEO. Banks added that Hodges' situation was critical, time was of the essence, and they had to start immediately. Banks also told Hodges that Banks was an "administrative advocate," that he had worked for a judge, and he was handling a number of cases. Banks said that Hodges did not need a lawyer because Banks was an expert in this particular field. When asked whether he thought Banks was a lawyer, Hodges responded:

> He-no, well I don't think he was a lawyer per se,
> but I thought he was like a legal representative or
> someone with experience in this particular field of
> Job Protectors, you know, the filing of the motions
> and the write-ups and to get me through without pay-
> ing - because what he indicated to me I did not
> necessarily need a lawyer because he knew more about
> this type of thing than anybody else. That is his
> profession was, Job Protectors.

Hodges paid Banks the $50 "consultation fee" during their May 29 meeting. At their second meeting, Hodges explained the details of his situation to Banks, and Banks asked Hodges for $2,000 to handle the case. Banks ultimately accepted an $800 down payment. Hodges paid it with $150 in cash and a $650 check, which had a notation in the memo portion that the check was for "legal fees." The check was made payable to the order of "Job Protectors." Banks did not provide a written contract for the services, but he told Hodges that he would prepare a contract later, after he had prepared the initial papers. According to Hodges, "as soon as [Banks] got those initial papers we would get a contract and draw up a contract for the balance of the [$]2,000.00."

Later that day, Hodges received a telephone call from his bank informing him that Banks was trying to cash the check that Hodges had written. Hodges' bank informed him that Banks was getting belligerent and upset because the bank refused to case the check without identification that proved that Banks was authorized to cash the check for Job Protectors. The bank went ahead and cashed the check for Banks, but Hodges became very "suspicious" and "uncomfortable" that Banks needed the money so badly that he had to cash the check immediately. Hodges then called Banks to cancel their arrangement and get his money back. Banks agreed to mail Hodges a refund within a couple of days." A week later, Hodges contacted Banks again because he had not received the money. Banks again promised to mail a check to Hodges. Hodges never received any money from Banks, and Hodges attempted but was unable to contact Banks again.

Based on this record, DCRA concluded that Banks had committed six unlawful trade practices. Specifically: "[Banks'] use of the title 'administrative advocate' and rendering of legal advice misrepresented that his services had a sponsorship, approval, certification, characteristic, and were of a particular standard, or quality when it did not in violation of D.C. Code § 28-3904 (a), (b) and (d)." Furthermore, "[Banks] accepted $800.00 as partial payment for services he did not render in violation of D.C. Code § 28-3904 (e): failed to provide Complainant with a written contract in violation of D.C. Code 28-3904 (a); and failed to remit Complainant's money in the amount of $800.00 in violation of D.C. Code § 28-3904 (u)."[3]

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[3] *The provisions of D.C. Code § 28-3904 that DCRA charged Banks with violating are as follows:*

It shall be a violation.... for any person to:

(a) represent that goods or

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services have a sourse, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;

(b) represent that the person has a sponsorship, approval, status, affiliation, certification or connection that the person does not have;

***

[3] (d) represent that goods or services are of particular standard, quality, grade, style or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

***

(q) fail to supply to a consumer a copy of a sales or service contract, lease, promissory note, trust agreement or other evidence of indebtedness which the consumer may execute;

***

DCRA ordered Banks to pay $800 plus interest to Hodges; to pay $175 to the District as court costs; and to pay the District a civil penalty of $250 for each of the six trade practice violations he committed, for a total assessment of $1,500.

II

Banks contends that DCRA exceeded its statutory authority in ruling that he committed trade practice violations. His argument is premised on the belief that only this court has jurisdiction over issues concerning the practice of law and, failing that, on the contention that his actions did not amount to unlawful trade practices under the Act. See supra note 3.

This court has the "inherent and exclusive authority to define and regulate the practice of law in the District of Columbia." Brookens v. Committee on Unauthorized Practice of Law, 538 A.2d 1120, 1125 (D.C. 1988); See D.C. Code § 11-2501 et seq. (1989). In addition, this court's

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(u) represent that the subject of transaction has been supplied in accordance with a previous representation when it has not;....

rules reflect our authority over the practice of law in this jursidiction. See D.C. App. R. 46-50.

This court also exercises some authority over the unauthorized practice of law by nonlawyers, see D.C. App. R.49, but there is no statutory or other authority to the effect that our power over the unauthorized practice of law is exclusive. Although the Consumer Protection Procedures Act excludes from its purview the "professional services of ... lawyers," D.C. Code § 28-3903 (c)(2)(C) (1991), there is no statutory purport to practice law. Nor do the Act's prohibitions against deceptive trade practices interfere with this court's authority to regulate the practice of law. We see no reason, therefore, why the Act should not apply to nonlawyers who purport to practice law.

The Act defines "trade practice" as "any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services." D.C. Code § 3901 (a)(6)(1991). "Goods and services: are defined as "any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, real estate transactions, and consumer service of all types." D.C. Code § 3901 (a)(7) (1991). We agree with DCRA that the performance of legal service is an act that "make[s] available," or "provide[s] information about," a service[]" that is "part[] of the economic output of society." The performance of legal services, therefore, is a "trade practice" under the Act.

B.

DCRA concluded, first that Banks violated three provisions of the Act, D.C. Code § 28-3904 (a),(b) and (d), by engaging in the unauthorized practice of law. In particular, the agency found that Banks had rendered legal advice and misrepresented to Hodges that Banks was an "administrative advocate," in violation of this court's order enjoining Banks not only from practicing law but also from holding himself out as someone who appears to give legal advice.[4]

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[4] *According to this court:*

> *Because respondent [Banks] is not and never has been a memeber of the District of Columbia Bar, or any other*

Bar, and in light of the evidence of his overall pattern of behavior of generating and fostering the illusion that he is a qualified member of the District of Columbia Bar, and his failure to remove that illusion, this court concludes that respondent has violated D.C. App. R. 49(b) [forbiding the unauthorized practice of law].

In re Banks, 561 A.2d at 166-67. Among the prohibitions this court imposed on Banks are the following:

FURTHER ORDERED that respondent is hereby permanently enjoined and restrained specifically from:

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(2) Using such terms to describe himself or his qualifications as "lawyer," "attorney," "counsel," "counselor," "Esquire," "advocate," or any abbreviation of the foregoing terms, or any other term or description which reasonably denotes that respondent is licensed to practice law in the District of Columbia;

(3) Using such terms to describe himself or his qualifications as "administrative law judge," "administrative trial advocate," any abbreviation of the foregoing terms, or any other similar term or description also which reasonably denotes that respondent's former employment as a hearing examiner

See In re Banks, a lawyer, see Finding of Fact 2 ("no distinction between himself and that of a lawyer"), an action that parallels the behavior this court found so significantly misleading that we permanently enjoined Banks from holding himself out not only as a "lawyer" or "counselor" but also as an "advocate" or an "administrative trial advocate." See Finding of Fact 8; supra note 4. DCRA's finding that Banks misrepresented himself as an advocate with skills equivalent to those of a lawyer adequately supports DCRA's conclusion that Banks violated D.C. Code § 28-3904 (a), (b) and

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constitutes a qualification or license to practice law in the District of Columbia;

(4) Using any advertising materials, business cards, firm resumes, personal resumes, firm descriptions, stationery, personalized forms or any other business documents relating to representation of individuals before administrative agencies or courts in this jurisdiction which do not expressly state in a separate paragraph and in one sentence at the outset of the document that respondent is "not admitted to practice of law in the District of Columbia or any other jurisdiction";

Id. at 168 (footnote omitted).

(d). See supra note 3.[5]

The fact that DCRA used this court's analysis in In re Banks as the basis for defining the practice of law for purposes of evaluating whether Banks engaged in deceptive trade practices is not troublesome. We see no reason why DCRA cannot construe the statute it administers in a way that equates various trade practice violations with the kinds of conduct this court found misleading in In re Banks. DCRA had no better way to define the unauthorized, and thus deceptive, practice of law. We believe the agency acted entirely properly, therefore, in agreeing with this court that Banks' mode of operation - including the terminology he used (e.g , the circumstances as the purveyor of "legal advice" that "had a sponsorship, approval, certification, characteristic, and were of a particular standard, or quality when it did not in violation of D.C. Code, sec. 28-3904 (a), (b) and (d)." Even if Hodges understood that Banks was not a licensed lawyer, DCRA found -

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[5] *Banks did not raise before the agency, nor does he argue on appeal, that these three violations duplicated one another. We therefore do not address the propriety of imposing a civil penalty for each of these violations.*

and the record supports the finding - that Banks misrepresented his status as being equivalent to a lawyer for the kind of problem Hodges presented.

DCRA made its own, independent findings about Banks' conduct based on hearing testimony and documentary evidence; it did not merely incorporate this court's findings in Banks. Substantial evidence of record supports DCRA's findings. We therefore are reviewing DCRA's independent evaluation of Banks' conduct under a statue barring deceptive trade practices; we are not holding Banks in contempt of court, as our dissenting colleague appears to argue. See post at note 4.[6]

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[6] *Judge Schwelb, in his separated opinion, calls our decision in In re Banks "irrelevant." Post at note 4. We agree that In re Banks is irrelevant in the sense that DCRA is not purporting to enforce it; DCRA has brought an independent statutory action based on an altogether new record. Our opinion in Banks is relevant, however, in the sense that DCRA, in administering the statue, has authority to use the norms announced in In re Banks as the basis for defining an unlawful trade practice. Presumably, therefore, anyone else conducting himself or herself as Banks did would be subject to statutory sanctions (just as Banks is here) based on application of the norms - the concepts characterizing the unauthorized practice of law - outlined in our* **In re Banks** *opinion.*

DCRA also concluded that Banks violated D.C. Code § 28-3904 (e) by accepting $800 from Hodges "as partial payment for services he did not render," and violated D.C. Code § 28-3904 (u) by failing " to remit conclusions about Banks' conduct are literally true, but a question remains: whether, on the facts, these conclusions reflect violations of the Act.

D.C. Code § 28-3904 (e) prescribed a violation for a "misrepresent[ation] as to a material fact which has a tendency to mislead." This provision appears to be forward looking: did a party make a material misrepresentation that tended to mislead someone thereafter? Although we are obliged to give deference to an agency's interpretation of a statute it administers, we are not required to do so when that interpretation "conflicts with the plain meaning of the statute or its legislative history." Smith v. Department of Employment Servs., 548 A.2d 95, 97 (D.C. 1988); see Nova Univ. v. Educational Inst. Licensure Comm'n, 483 A.2d 1172, 1190-91 (D.C. 1984). Here $800 "as partial payment for services he did not render." That finding does not meet § 28-3904 (e) criteria. Even if Banks implicitly misrepresented a material fact - that he performed services for $800 - there was no discernible "tendency to mislead." At all times Banks apparently stood ready to perform the services for the fee agreed upon, but Hodges dismissed Banks on the very day he gave Banks the $800, before Banks had had an opportunity to perform any service whatsoever. Banks' acceptance of the $800 was based on a commitment to proceed on Hodges' behalf - a commitment that Hodges, not Banks, cancelled. In short, there could have been no tendency to mislead since Hodges himself had declared that no services were to be performed. We therefore must conclude there is not substantial evidence to support DCRA's ruling tha Banks violated § 3904 (e).

D.

D.C. Code § 28-3904 (u) is equally problematic: it presupposes a "represent[ation] that the subject of a transaction has been supplied in accordance with a previous representation when it has not." D.C. Code § 28-3904 (u). This provision calls for a backward look: did a party make a present misrepresentation that he or she has done something pursuant to a previous representation. Here, Banks' refusal to refund Hodges' $800 amounted to a misrepresentation only if Banks, in retaining the money, explicity or implicity represented that he was entitled to it either (1) as compensation for services, when in fact he had not rendered any, or (2) as damages for Hodges' breach of contract when in fact Hodges had not committed a breach. There is no finding, however, that Banks made either kind of representation. As noted above, on the very day that Banks contracted to perform services, Hodges cancelled the deal. It is therefore impossible to discern from this record how Banks - in keeping the $800 as damages of some sort. The only relevant record evidence appears to be Hodges' testimony that Banks agreed to return the money but never did so. There is a simple finding to that effect; DCRA said the "record shows that Complainant tendered a sum of $800.00 to the Respondent for services that were never performed." In short, there is no factual finding or record evidence that Banks based his retention of the $800 on a representation of any kind; for all we can tell Banks simply refused to return the money because he was out of funds or elected to keep the $800 out of spite. We therefore conclude that no substantial evidence supported DCRA's ruling that Banks violated § 3094 (u).

E.

Finally, DCRA concluded that Banks violated D.C. Code § 28-3904 (q) by "fail[ing] to provide Complainant with a written contract." The record does not support this conclusion. DCRA found, based on Hodges testimony that Banks had "promised to give Complainant a contract after filing fees had been paid and the initial paper work had been completed." Hodges testified at the DCRA hearing that he had "never received a contract." The problem is, as noted above, that Hodges cancelled Banks' employment almost immediately, before Banks had had an opportunity to complete "the initial paper work," which DCRA itself found was to be the event entitling Hodges to a written contract. Banks had no obligation, other than conditional promise that Hodges himself interdicted, to supply a written contract. Accordingly, we must conclude that DCRA's ruling that Banks engaged in a deceptive trade practice in violation of § 3904 (q) is not supported by substantial evidence.

III.

Based on the foregoing analysis, DCRA's order is affirmed in part and reversed in part. We conclude that DCRA had authority to

proceed against Banks under the Consumer Protection Procedures Act. We sustain DCRA's rulings that Banks engaged in three deceptive trade practices attributable to D.C. Code § 28-3904 (a), (b), and (d), based on the unauthorized practice of law. We further conclude, however, that the required substantial evidence, see D.C. Code § 1-1510 (a)(3)(E) (1993), does not support the agency's deceptive trade practice rulings under D.C. Code § 28-3904 (e),(q), and (u). We therefore affirm DCRA's order to the extent of requiring Banks to pay Hodges $800, plus interest, reflecting restitution for failure of consideration; to pay the District $175 in court costs; and to pay the District a civil penalty of $250 for each of three trade practice violations, totalling $750.[78]

Schwelb, Associate Judge, concurring in part and dissenting in part: I regret that I am unable to join my colleagues in sustaining the agency's imposition of sanctions against Banks for allegedly deceptive trade practices. It is

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[8] *Nothing in DCRA's ruling indicates that the order to repay the $800 to Hodges, plus interest, was premised on a particular violation. We are satisfied that DCRA intended for Hodges to receive restitution if its ruling on any trade practice violation is sustained.*

questionable, in my view, whether there is sufficient evidence in the record to support the relief granted. Assuming that there is sufficient evidence, the findings of the Administrative Law Judge (ALJ) are woefully inadequate to enable this court to carry out its responsibility to conduct meaninful judicial review.

I.

I agree with my colleagues that Banks' failure to repay the money advanced to him by Hodges has not been shown to he an unlawful trade practice proscribed by the Consumer Protection Act (CPPA). The retention of the fees was not a representation at all, and therefore could not be a misrepresentation. I disagree with with apparent suggestion at page 12 of the majority opinion that by not repaying Hodges, Banks may have "imlicitly misrepresented a material fact - that he performed services for the $800." As my colleagues point out later, at page 13, Banks may have refused to return the money because of insolvency or just plain orneriness. In any event, there is no evidence that Banks made any representation, true or false, explicit or implicit, on this particular subject.

This leaves the charge that Banks misrepresented his qualifications and status as a non-lawyer, allegedly in violation of three different preovisions of the statute (each of which violations supposedly warrants a separate penalty). The majority has summarized the record evidence on this aspect of the case as follows:

Banks told Hodges that Hodges had an Equal Employment Opportunity (EE0) case and that Banks would begin preparing the package to file with EEO. Banks added that Hodges' situation was critical, time was of the essence, and they had to start immediately. Banks also told Hodges that Banks was an "administrative advocate," that he had worked for a judge, and that he was handling a number of cases. Banks said that Hodges did not need a lawyer because Banks was an expert in this particular field. When asked whether he thought Banks was a lawyer, Hodges responded:

> He - no, well I don't think he was a lawyer
> per se, but I thought he was like a legal
> representative or someone with experience

> in this particular field of Job Protectors, you know, the filing of the motions and the write-ups and to get me through without paying because what he indicated to me I did not necessarily need a lawyer because he knew more about this type of thing than anybody else. That is what his profession was, Job Protectors.

Which part of this recitation is supposed to establish a material misrepresentation is unclear. Banks allegedly said he was an administrative advocate, but there is nothing in the record to suggest that this was untrue. He is said to have claim to know a lot about equal opportunity complaints- more than anyone else knows, in fact - but surely such "puffing" is not a violation of the Act.[9] Hodges testified that

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[9] *Consumer fraud is not amusing. As to this kind of simplistic braggadocio, however - "my dad can whip your dad" - I advert to the librettist's perhaps exaggerated counsel:*

Banks told him he did not need a lawyer, but there was no evidence that Hodges in fact did need one to file a complaint of racial discrimination in employment. At the very least, the record as to any misrepresentation is opaque and amorphous, and it was therefore especially important for the finder of fact to identify any special misrepresentation with particularity.

II.

We recently reiterated in Cruz v. District of Columbia Dep't of Employment Serv., ___ A.2d ____, No. 92-AA-690, slip op. at 6 (D.C. Nov. 18, 1993) that, in reviewing agency action under the District's Administrative Procedure Act, we inquire

(1) whether the agency has made a finding

If you wish in the world to advance
Your merits you're bound to enhance
You must stir it and stump it
And blow your own trumpet
Or, trust me, you haven't a chance.

William Gilbert & Arthur Sullivan, Ruddigore, Act I (1887).

> of fact on each material contested issue of fact: (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings.

(Citations omitted). In the present case, the first inquiry must, in my view, be answered in the negative, and this precludes any fruitful analysis of the second and third questions.

The ALJ's findings of fact are not supposed to be perfunctory; rather, they must reflect " a meaningful attempt to come to grips with the difficult factual questions raised by this record." Eilers v. District of Columbia Bureau of Motor Vehicle Serv., 583 A.2d 677, 685 (D.C. 1990). The only finding made by the ALJ which purports to deal at all with deceptive practices on Banks' part - Finding of Fact No. 2 - reads as follow:

> During consultation, the Respondent, trading as Job Protectors, Administrative Advocates, represented to Complainant that he

was an Administrative Advocate. Respondent informed Complainant that he had a case and would go through the "EEO" process, and put a package together. Complainant, believing Respondent was a lawyer, stated that Respondent made no distinction between himself and that of a lawyer.

(Citations to record omitted). As the majority points out, Hodges testified that he did not believe that Banks was a lawyer, and the ALJ's finding to the contrary is without record support. This leaves us with only the ALJ's cryptic comment that, according to Hodges, Banks "made no distinction between himself and that of [sic] a lawyer."

Frankly, I am at a loss to understand what this rather inscrutable phrase was supposed to mean.[10] Perhaps the ALJ was trying to convey the idea that Banks did not tell Hodges that "I am not a lawyer." According to Hodges, however, Banks "indicat[ed] to me I did not necessarily need a lawyer," thus clearly implying that Banks was not a member of that noble calling. Moreover, I know of no authority, and the ALJ cited none, requiring an individual who does the kind that lawyers also do to make a declaration of the kind the ALJ seems to have had in mind. Attorneys prepare tax returns, but this does not make it an unlawful or deceptive practice for an employee of H & R Block to fail to volunteer that he or she is not a member of the bar.

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[10] Exalting the ordinarily humdrum task of construction to a creative art form, the majority attributes to the agency a finding that Banks "misrepresented himself as the functional equivalent of a lawyer." Later, the majority says that the agency found that Banks falsely represented himself to be "an advocate with skills equivalent to those of a lawyer." The problem is that the ALJ never wrote these phrases or

In Conclusion of Law No. 14 ALJ concluded:

> Petitioner has established by a preponderance of the evidence that Respondent's use of the title "administrative advocate" and rendering of legal advice misrepresented that his

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anything like them. Moreover, neither the ALJ nor the majority has explained what precisely it was that Banks said that would support such findings.

services had a
sponsorship, approval, certification, characteristic,
and were of a particular standard, or quality when it
did not in violation of D.C. Code, sec. 28-3904 (a), (b) and (d).

If this Conclusion was designed to be a factual finding, it did not disclose in what way Banks' use of the title "administrative advocate" was deceptive, nor did it identify the "legal advice" which Banks allegedly provided. If the fourteenth legal conclusion added anything to the second finding of fact, it was not very much.

In other words, the ALJ has made almost no substantive findings at all.[11] Even if there is evidence in the record supporting the relief granted by the agency - and that "if" is not an inconsiderable one - the findings were, in my view, altogether inadequate, and effective judicial review has been foreclosed. Accordingly, I would remand the case to the agency with directions to issue findings of fact

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[11] *In fact, as my colleagues point out, the ALJ did not even make an explicit finding that Hodges did not get his money back!*

and conclusions of law which comport with the requirements of the District's Administrative Procedure Act.[12]

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[12] *Banks may very well be in contempt of this court's order in the unauthorized practice case, in which he was enjoined, inter alia. from using the term "advocate" in describing himself or his qualifications.* ***See In re Banks****, 561 A.2d 158, 168 (D.C. 1987). If so, then perhaps proceedings should be instituted against Banks for contempt. In my view, however, the injunction is irrelevant to the present case. The CPPA means the same thing vis-a-vis all defendants, and the question whether Banks has violated it is not affected in any way be the existence of the injunction.*

District of Columbia Court of Appeals
Committee on Unauthorized Practice of Law
500 INDIANA AVENUE, N.W. -- Room 4200
Washington, D.C. 20001
(202) 879-2777

December 8, 1993

C. Roger Cooper
4713 Dunbarton Drive
Orlando, FL 32817-3133

Re: Simon Banks

Dear Mr. Cooper:

On December 6, 1993, the District of Columbia Court of Appeals handed down a decision which may be of additional interest to you concerning your complaint against Simon Banks. This does not relate to the contempt proceedings against Mr. Banks that is scheduled for hearing January 18, 1994.

In the case of Banks v. District of Columbia Department of Consumer and Regulatory Affairs, No. 91-AA-883 (DCCA, December 6, 1993), the Court held that members of the public like you may recover money paid to people like Banks who solicit the money on the basis of a misrepresentation that they are the functional equivalent of a lawyer.

Specifically, the Court held that people who pay money to Simon Banks believing that he is the functional equivalent of a lawyer, and rely on such descriptions as "administrative advocate", may recover the payments if the services were not performed. A complaint must be submitted to the D.C. Department of Consumer and Regulatory Affairs, and that agency must agree to order the recovery.

A copy of the Court's Decision is attached for your information.

If you wish to contact the District of Columbia Department of Consumer and Regulatory Affairs, you may contact their Consumer Protection Division at 614 H Street, N.W., Washington, D.C. (202/727-7080).

If you should have any questions concerning this matter, you may contact information at the District of Columbia Department of Consumer and Regulatory Affairs (202)727-7000).

Very truly yours,

Stuart F. Pierson
Chair

Enclosure

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OFFICE OF ADJUDICATION

613 "C" STREET, N.W., SUITE 729

WASHINGTON, D.C. 20001

CASE NUMBER: OAD-91-007-1

D.C.R.A. V. SIMON BANKS

DATE OF HEARING: APRIL 22, 1991

ADMINISTRATIVE LAW JUDGE OLGA CLEGG

PROCEEDINGS

OLGA CLEGG, ADMINISTRATIVE LAW JUDGE:

ALJ: Good morning. This court is now in session and will come to order. It is the 22nd day of April 1991 at 10:05.

The case before me is D.C.R.A. V. Simon Banks, trading as Job Protectors, OAD-91-007-1. The respondent is charged with the following unlawful trade practice violations: D.C. Code, Section 28-3904-A, 28-3904-B, 28-3904-D, 28-3904-E, 28-3904.Q and 28-3904.U.

Please note this proceeding is being recorded and is part of the official record upon which a final Decision will be rendered.

The government bears the burden of establishing by the preponderance of the evidence the cited unlawful trade practice violations.

The parties are reminded that this is an Administrative Hearing and will be conducted in a courteous and professional manner. Further, this proceeding is not bound by the formal rules of evidence or civil procedure.

Will the parties please identify yourselves for the record?

MS. BANKSHEAD: My name is Bonnie Bankhead and I am legal counsel for the petitioner and the complainant.

MR. HODGES: My name is Glenard Hodges and I am the complainant.

ALJ: The court will note for the record that the respondent is not present n or is there a representative here on his behalf. The record shows that the respondent was personally served with summons and a complaint on March 7th, 1991 at 300 eye Street, S.E., Suite 206 at 11:30 a.m. and service was made on his secretary known as Sandy. The court, therefore, finds that the respondent was properly served and his non-appearance today will inno way impede us from proceeding. We shall, therefore, conrtinue with this hearing as scheduled.

ALJ: Yes.

Ms. BANKHEAD: The address is 300 Eye Street, N.E.

ALJ: All right. Correction for the record. There is a "M".

So I knew there was a "M" Street.

Okay. The address is 300 Eye Street, N.E., Suite 206.

Ms. Bankhead, do you have an opening or would you like to proceed.

MS. BANKHEAD: Let's just proceed. Can I get your full name please?

ALJ: Before you proceed Mr. Hodges will you please stand and raise your right hand?

OATH ADMINISTERED

ALJ: You may proceed.

EXAMINATION BY MS. BANKHEAD OF MR. HODGES

Q Will you give your full name please?

A. My name is Glenard Navoro Hodges.

Q Would you spell the first name

A GLENARD.

Q. Mr. Hodges, with regard to the matter that we have before us today, could you please tell us how you first came into contact with the respondent, Simon Banks?

A Well, I was having problems on my job and one of my co-workers gave me his name and telephone number and told me that I should give him a call. He said he was Job Protector's and he could help you in any kind of problems that you have on the job.

Q With regard to your co-worker, did

your co-worker have personal knowledge of Mr. Banks?

A He said he had knowledge from his wife. His wife had called and he had done some work or something, but he said just call. He didn't really know whow the outcome was, but just give him a call.

Q When you telephoned Mr. Banks, what happened?

A I telephoned Mr. Banks. He would not divulge anything. He said that I would have to come in and he told me at that time it was a $50.00 consultation fee at that time. I made an appointment with him in the evening, somewhere 6 or 7 O'clock in the p.m.

Q The same day?

A No I think it was the next day.

Q What happened when hyou went into see Mr. Banks?

A I went in his office. He had a secretarhy and there was some more people in at the time and I think I waited about an half of an hour or so before he got to me because he had another person interviewing and when I went into see him I told him about my case he was taking everything down on a computer, word processor, and we were constantly being interrupted by telephone calls. He said people were calling and they wanted information over the phone and he would not give them any because they didn't want to pay the $50.00.

Anyway, I gave him details and everything and he said he would, you know, take a look at this and put a little something together and would get back with me.

Q What kind of questions did he ask you.

A What my problems were on the job and how were they messing with me. It was basically an EEO and thought that I was being dealt with unfairly and so he said I did have a case, you know, and I would have to go through the EEO process, you know.

Q What did he represent that he would do for you?

A That he would put the package together, that he would file the papers and do everything that needed to be done, you know, because you have to file and you have to have so much time and he was telling me that time was of the essence, that my situation was critical, that they were building a case on me, you know, you got to get this done and start immediately, and by taking time we got to get the papers filed and go through the process.

Q What kind of representations did he make in terms of his experience?

A He stated that he was an

administrative advocate. He worked for a judge that did this and he represented a number of cases. He cited some chief of the fire department and he had pictures on the wall. His office was verhy impressive, you know, he was basically an expert in dealing with these types of people who have problems on the job.

MS. BANKHEAD: I want to move into evidence Exhibit No. 1, copy of check and receipt with the check and two receipts.

Q First of all, I want you to identify these for me please. Can you identify this receipt which is marked "received a sum of $50.00".

A Right. It has no name. He left my

name off it and the date is May 29. This was my first visit, a $50.00 consultation fee.